

GREECE

Financial Assistance

IBA Corporate and M&A Law Committee 2012

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INTRODUCTION

This guide sets out a general overview of the regulation dealing with the concept of financial assistance in Greece in connection with Public Limited Companies (Societes Anonymes, S.A.).

RULES - ORIGINS

Financial assistance is regulated in Greek Law by article 16a of the Codified Law 2190/1920, which was inserted by article 22 of Law 3604/2007. This article has its origins in and includes the regulation of article 23a § 1 sen. b of Codified Law 2190/1920 which was in line with the provision of article 23 § 1 of the Second Council Directive 77/91/EEC of 13.12.1976. It is also in line with the provisions of Directive 2006/68/EC of 6.9.2006.

THE TERM “FINANCIAL ASSISTANCE”

In Greek Law the term “Financial Assistance” refers to the direct or indirect advancement of funds or making loans or providing security by a Public Limited Company to third parties with a view to the acquisition by such third parties of Company’s shares.

THE RULE: FINANCIAL ASSISTANCE IS PROHIBITED

As a general rule it is prohibited to Public Limited Companies to provide financial assistance to third parties for the acquisition of their own shares. More specifically, this prohibition applies to Public Limited Companies or any related companies in the same group, with the financial assistance of which third parties aim to the acquisition of shares of the parent undertaking. Also it applies to partnerships, with the financial assistance of which third parties aim to the

acquisition of shares of the Public Limited Company, which is a member of such partnership.

DEFINITION OF “THIRD PARTIES”

“Third party” is any person, legal or natural, except from the employees of a company or the employees of any related company in the same group. Third parties are also considered the individual members of the Board of Directors of the Company, or of a parent undertaking, or such parent company undertaking itself, or individuals acting in their own name but on behalf of the members of such bodies or on behalf of such undertaking.

PURPOSE OF THE PROHIBITION

This regulation aims a) to the maintenance of the company’s share capital and b) to prevent the circumvention of another general rule, i.e. the acquisition by the company of its own shares.

CONDITIONS UNDER WHICH THE PROHIBITION IS WAIVED

By virtue of article 16a, par. 1 of Codified Law 2190/1920, (which incorporates the option given by Directive 2006/68/EC), a company may provide financial assistance to third parties subject to the conditions set out below, that must be fulfilled **cumulatively**:

- Under the responsibility of the Board of Directors and after a thorough investigation of the creditworthiness of the third party, or in the case of multiparty transaction, of each counterparty, financial assistance shall be provided only at fair market conditions, i.e. conditions applicable in practice to similar transactions, especially with regard to interest received by the company and to security provided for ensuring company’s requirements.
- A written report indicating the reasons for such a transaction shall be submitted by the Board of Directors to the extraordinary General Meeting for prior approval. The written report shall be also submitted to the Registry for publication with a view to protect the interests of creditors and minority shareholders of the company. In case of any transaction with individual members of the Board of Directors of a company, or of a parent

undertaking, or such parent company undertaking itself, or individuals acting in their own name but on behalf of the members of such bodies or on behalf of such undertaking, an auditor's report shall be submitted to the extraordinary General Meeting indicating that such transaction does not conflict with the company's best interests.

- The aggregate financial assistance granted to third parties may not result in the reduction of total shareholder equity to an amount below the amount specified in article 44a, par. 1 of Codified Law (namely share capital plus reserves that may not be distributed), since this could be considered as a return of capital to the shareholders, taking into account also any reduction of the net assets that may have occurred through the acquisition, by the company or on behalf of the company, of its own shares according to article 16. The company shall include, among the liabilities in the balance sheet, a non distributable reserve, equal to the amount of the aggregate financial assistance.

EXCEPTIONS TO THE RULE OF PROHIBITION

There are also two exceptions to the general rule of prohibition, as this is provided in paragraph 4 of article 16a, the content of which is as follows:

- a) The first exception concerns the financial assistance provided by **credit and financial institutions** within the normal course of their operations.
- b) The second exception concerns the financial assistance granted by the company to its **employees** or to the employees of any related company in the same group.

Both exceptions shall apply under the condition that the financial assistance shall not result to a reduction of the net assets of the company below the amount specified in article 44a, par. 1 of Codified Law.

CONSEQUENCES OF BREAKING THE CONDITIONS OF ARTICLE 16a L. 2190/1920

Any infringement either of the general rule of prohibition or of the conditions under which financial assistance is permitted or of the conditions set out in the two exceptions results in absolute nullity of the financial assistance.

Furthermore, the Board of Directors shall be liable for the non-compliance with statutory requirements and for any damage caused because of the financial assistance provided.

NOT INCORPORATED PROVISIONS

Greek Law did not incorporate the provision of article 23§3 of the Second Council Directive 77/91/EEC of 13 December 1976, which provides that prohibition of financial assistance does not apply to transactions effected with a view to acquisition of shares as described in article 20 (1) (h) of the Directive.

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Athens, Greece

September 2012